

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON

GLACIER NORTHWEST, INC.,

Plaintiff,

v.

CEMENTAID INTERNATIONAL  
MARKETING, LTD.,

Defendant.

Case No. 2:18-cv-00556-TSZ

**CEMENTAID INTERNATIONAL  
MARKETING LTD.'S REQUEST  
FOR JUDICIAL NOTICE IN  
RELATION TO ITS REPLY IN  
SUPPORT OF ITS MOTION TO  
DISMISS GLACIER NORTHWEST,  
INC.'S AMENDED COMPLAINT**

Pursuant to Federal Rule of Evidence 201, Defendant Cementaid International Marketing, Ltd., (“Cementaid”) requests that the Court take judicial notice of certain documents, attached hereto, in relation to Cementaid’s Reply in Support of its Motion to Dismiss Glacier Northwest, Inc.’s Amended Complaint.

**I. Legal Standard**

On a motion to dismiss, the Court may, pursuant to Federal Rule of Evidence 201, “take judicial notice of matters of public record outside the pleadings.” *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Valley Fruit Orchards v. Global Horizons Manpower, Inc.*, No. CV–09–3071, 2010 WL 1286367, at \*2 (E.D. Wash. Mar. 26, 2010). Moreover, a court may take judicial notice of a document, such as a contract, “whose authenticity is not contested and which Plaintiff has relied on his complaint.” *Chandola v. Seattle Housing Authority*, Case No. C13–557, 2014 WL 4540024, at \*1 (W.D. Wash. Sept. 11, 2014); *Swartz v. KPMG LLP*, 476 F.3d 756, 763

(9th Cir. 2007) (“[A] court may consider a writing referenced in a complaint but not explicitly incorporated therein if the complaint relies on the document and its authenticity is unquestioned.”).

## II. Judicial Notice of the Attached Document is Appropriate

Cementaid requests that the Court take judicial notice of the following declaration, which was publicly filed by Glacier Northwest, Inc. (“Glacier”), in the following actions:

1. Exhibit 1: Supplemental Response of Glacier Northwest, Inc., To OSC Re Sanctions Re Insurance Policies, filed on October 19, 2018, in the Superior Court of the State of California, County of San Francisco (Lead Case No. CGC-16-553758, Individual Case No. CGC-557830)

Because this declaration constitutes a matter of public record filed by Glacier in an official court docket, this Court may take judicial notice of it. *MGIC*, 803 F.2d at 504 (taking judicial notice of a motion to dismiss and supporting memorandum); *Valley Fruit Orchards*, 2010 WL 1286367, at \*2 (taking judicial notice of court filings and records). Moreover, any objection to this declaration should be overruled since the statements were made by Glacier’s counsel under penalty of perjury and thus constitute party admissions, an applicable exception to the hearsay rule.

## III. Conclusion

For the foregoing reasons, Cementaid requests that the Court take judicial notice of the documents referenced herein.

Dated: December 14, 2018

Respectfully submitted,

**BRACEWELL LLP**

By: /s/ Philip J. Bezanson

Philip J. Bezanson, WSBA No. 50892

Jared D. Schuettenhelm, WSBA No. 46181

701 Fifth Avenue, Suite 6200

Seattle, WA 98104-7043

Telephone: (206) 204-6200

Facsimile: (800) 404-3970

phil.bezanson@bracewell.com

jared.schuettenhelm@bracewell.com

Richard F. Whiteley (*pro hac vice* pending)

Stacianne M. Wilson (*pro hac vice* pending)

711 Louisiana Street, Suite 2300  
Houston, TX 77002-2770  
Telephone: (713) 223-2300  
Facsimile: (800) 404-3970  
richard.whiteley@bracewell.com  
staci.wilson@bracewell.com

*Attorneys for Cementaid International  
Marketing, Ltd.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 14, 2018 to all counsel of record who have consented to electronic service via the Court's CM/ECF system.

/s/ Philip J. Bezanson

Philip J. Bezanson